BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 01-244
CHARLES W. COPE **CASE NO.: SC01-2670**
_____/

MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW Respondent by and through undersigned counsel and moves for partial summary judgment pursuant to Rule 1.510, *Florida Rule of Civil Procedure* and in support thereof states:

1. The pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue as to any material fact and that the Respondent is entitled to a judgment as a matter of law.

2. In order for there to be a genuine issue of material fact on the allegations presented, the JQC must possess competent evidence which minimally meets the threshold standard set forth in the case of *Inquiry Concerning Davie*, 645 So.2d 398 (Fla. 1994).

3. In *Davie* the Court held that in order to sustain a conviction in a JQC proceeding the quantum of proof necessary to support either a recommendation of reprimand or removal must be clear and convincing. The evidence must be credible, the memories of the witnesses must be clear and without confusion; the facts to which the witness has testified must be distinctly remembered; the testimony must be precise and explicit and the witnesses

must be lacking in confusion as to the facts at issue. Moreover, testimony which is indecisive, confused, or contradictory, according to the Court in *Davie*, is "a far cry from the level of proof required to establish a fact by clear and convincing evidence: "the facts to which the witnesses testify must be distinctly remembered; the details in connection with the transaction must be narrated exactly in order; the testimony must be clear, direct and weighty, and the witnesses must be lacking confusion as to the facts at issue." Citing, *Solomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983) (Quoting *Nordstrom v. Miller*, 227 Kan. 59, 605 P.2d 545, 552 (1980)).

4. As will be shown as to each count, not only does the JQC not possess evidence which even minimally approaches the standard requisite to establish a case against Respondent, the evidence clearly establishes that the alleged conduct did not occur.

COUNT I – PUBLIC INTOXICATION

5. Attached hereto are transcripts of the depositions of Lisa Jeanes, Nina Jeanes. Officer Philip Nash, and Corporal John Nyunt. The testimony of the witnesses establish clearly that the threshold standard of evidence cannot be met as to Count I.[1] The only evidence the JQC possesses in an effort to support allegations in paragraphs 1 through 8 of Count I is the testimony of Lisa and

[1] While the Respondent has admitted to being intoxicated in the early morning hours of April 4, and April 5 2001, the degree of inebriation was not to the level alleged, wherein Respondent supposedly "wandered" the public streets, improperly spied on two women, and could not remember what he did or where he went.

Nina Jeanes, the testimony of Police Officer Nash and the testimony of the Respondent . Review of the deposition transcript of JQC principal witness Lisa Jeanes reflects clearly her admissions that she was extremely intoxicated during the events alleged in paragraphs 2 through 5 of Count I; that her recollection of events was significantly impaired; that her statements in deposition were impossibly contradictory to statements she made to police; and she was unable to even opine that the Respondent was intoxicated.

6. Paragraph 2 of Count I alleges that the Respondent "wandered" onto the premises of Normandy Inn and began eavesdropping on the personal conversation of a mother and daughter. Paragraph 3 alleges that after this supposed "eavesdropping" Respondent went upstairs to the second balcony where the two women were and interposed himself in that personal conversation. The evidence, consisting of the direct testimony of the Respondent and the admissions of the two women conclusively refute the allegations in paragraphs 2 and 3.

7. The Respondent has testified that while walking past the premises of the Normandy Inn his attention was called to the two women by their apparent distress. He heard the mother directing abusive language at the daughter and the daughter crying. He thereupon walked up the stairs to the second floor balcony where they were situated, locked out of their room and offered his assistance. When they could not find their key he took the daughter down to

the manager's office in an unsuccessful attempt to rouse the manager. It was at that location that the daughter directly confided in him certain personal matters that she had been discussing with her mother and affirmatively sought Respondent's company away from the mother.[2]

8. It is undisputed that the testimony of both the mother and the daughter cannot support, and in fact refute, the allegations of "eavesdropping" and "interposing in a personal conversation." The mother admitted in deposition that there was no basis for her "assumption" that Respondent was eavesdropping. She testified that Respondent did not have discussion with her daughter in her presence (Transcript pg. 89); and asserted that the only basis for her assumption that the Respondent was eavesdropping was "what Lisa told me that she and Judge Cope had discussed - - when we got back to Davis." (Transcript pg. 93)[3] The mother further admitted that her daughter told her she freely discussed those matters with the Respondent while she walked with Respondent to the beach and walked on the beach. She further admitted she did not know whether her daughter herself brought up the subject of her abortion and her boyfriend and admitted that if her daughter brought up the

---

[2] The evidence clearly establishes that the daughter affirmatively sought Respondent's company, confided personal matters to him, and ultimately wound up nearly naked in his hotel room. The evidence further conclusively establishes that the daughter sought to conceal all this from her mother and the police in California - - hence she invented allegations of "eavesdropping" and subsequent "aggressive sexual advances" on a beach from which she supposedly fled in terror.

[3] Two days later.

subject there was no basis to conclude that Respondent was eavesdropping. (Transcript pgs. 95-97)

9. The daughter likewise had no evidence that Respondent was eavesdropping at any time at the Normandy Inn. She testified:

> "I can't tell you exactly word for word anything. I was very intoxicated - - - I can tell you the gist of what happened. He arrived - - and all I know is he was like I can take you to a safe place . . .
> Question: He arrived and the phone rang and you discovered the key was missing?
> Answer: Yes. I was intoxicated and I had the impression this guy was this religious person I felt like he knew this I don't' know why but I did I didn't think - - I didn't think oh he's eavesdropping on us it just didn't I didn't think about it he just showed up - - I think at one point he said I'm friend and that was on the porch I kind of remember that." (Deposition Transcript pg. 28)

10. In fact it is established conclusively by the evidence that the Respondent learned personal matters from the daughter's direct and unsolicited report to him later down at the manager's office and not from any assumed "eavesdropping." The daughter was unable to credibly refute this fact.

> "Question: What conversation did you have with him when he took you down to the manager's office?
> Answer: I don't remember.
> Question: Do you admit that he took you down to the manager's office?
> Answer: I think we went down there but I don't remember that very well.
> Question: Do you remember asking Judge Cope as you were waiting at the door (of the manager's office) quote, what do you think of a woman like me?
> Answer: No, I do not.
> Question: Did that happen?

Answer: I do not remember that no.
Question: Do you deny that happening?
Answer: I was drunk but I do not recall that." (Deposition Transcript, Pg. 29/30)"

"Question: Did you tell Judge Cope standing outside the manager's office that your mother was an alcoholic?
Answer: No, I do not remember that. I do not remember my conversation with him. I do not remember ever saying that. I never even remember discussing my mother with him." (Deposition Transcript, pgs. 31-32)

"Question: Is it fair to say ma'am that your recollection of the events on the evening of April 3rd early morning hours of April 4th is not clear.
Answer: Yes." (Deposition Transcript, pg. 30)
"Question: Were you confused?
Answer: I was intoxicated and I was very upset - - I don't remember some things - - I don't like the word 'confused'

but I'm telling you that I was intoxicated.[4] There are points that are much more clear to me and there are points that aren't as clear and that's all I can say, and there certain obviously parts of the conversation that I apparently had that I don't remember. - - I do know that I started to sober up on the beach.
Question: Is it fair that before you started to sober up your recollection of events is not clear?
Answer: Yes." (Deposition Transcript, pg. 39)
"Question: So everything that happened prior to when you started to sober up on the beach is not clearly recollected by you?
Answer: Yes. From the moment that he appeared to when I left the beach or when I started to sober up on the beach yes there are parts that are very unclear to me." (Deposition Transcript, pg. 39).

"Question: Did you tell Officer Nash that Judge Cope offered you his hotel room and you accepted --
Answer: I don't remember that.
Question: Do you deny making that statement to him?
Answer: I don't remember.
Question: Do you deny making that statement to him?
Answer: I don't remember that.
Question: Do you deny making that statement to him?

---

[4] In her June 15, 2001, taped statement to District Attorney Investigator Brow, she stated " - - I was very confused - - ." Indeed she could give no coherent account of the events on the balcony, where Respondent was supposedly "eavesdropping:" "I was telling Officer Nash that basically where I was most worried with the whole deal was right when the guy kind of appeared at our hotel room to when my mom kind of leaving with him, going to this room at another hotel which is not kind of where we thought we were going but we were...I was very confused. And then coming back, I guess we were in the police car with Officer Nash and my mom...and my mom was really upset at that time, very upset. Um, and we came back and I…I guess the guy was not with us at that time and I really worry as to where or how he appeared that he was just at the door is what I remember. And, our door was open and my mom was changing and so I was at the door and I don't know how soon it was that he reappeared but I was thinking it was pretty much right when we got back in the room. Because I ad not changed or anything and I think we had pretty much just gotten back to the hotel room and he was there…at the door. And that part is really, really blurry to me but, um, I'm thinking it was very shortly after we had arrived back at the room. And I guess Officer Nah had helped get us back into the room because we were missing our keys. And, basically, he was…again I was asking him…I was confused as to who he was or why he was there. He kind of lead me to believe that he was kind of sent to us or he kind of gave the impression that he was a religious person so, um, anyway, he just sort of gave that sort of notion that he was somebody there that…obviously he was listening to our conversation. But, anyway, so he was like let's go get…let's just talk, let's take a walk, let's take go down to the beach and talk and talk on the beach. It's not that far from where this hotel was. It's right on the street, like the main drag of Carmel. And so, anyway, we left there and just walked down to the beach."

Answer: I don't remember. (Deposition Transcript, pg. 56)

Question: Do you remember having your head on Judge Cope's shoulder?
Answer: I remember having difficulty walking. I remember he was holding me up." (Deposition Transcript, pg. 58)

"I remember him being there at the hotel (Officer Nash) but I don't remember getting in a car with him to go there and I don't remember any of those statements you're saying specifically what Judge Cope said or whatever. I cannot tell you that I don't remember." (Deposition Transcript, pg 61)

"Question: Isn't it true your mother became angry at Officer Nash for asking her questions?
Answer: I don't know. I don't remember that." (Deposition Transcript, pg. 62)

"Question: Did your mother start cursing at Officer Nash.
Answer: I don't remember that.
Question: Do you deny that it happened?
Answer: I do not remember that. I do not recall that.
Question: If your mother was cursing at a police officer that is something you would remember, is it not?
Answer: Maybe not after two bottles of wine and a night of drinking beer. No, I don't remember that." (Deposition Transcript, pg. 60).

11. Concerning the allegation in paragraph 3 of Count I that the Respondent interposed himself into the women's conversation, here again both women denied that; and the only competent evidence concerning this allegation is that the Respondent offered assistance in getting them into their hotel room

12. In addition, while her testimony is wildly vacillating and inconsistent as more fully shown below, Lisa Jeanes herself acknowledged that the Respondent did not interpose himself into a private conversation.

> "Question: Between the time that he arrived and the time that the phone rang did you allow him to discuss your private matters with him?
> Answer: We weren't - - no we didn't get into any more conversation." (Transcript pg. 24)

In conclusion, as to Count I, the allegation asserts that the Respondent was intoxicated to such an egregious degree on two separate dates that he "wandered" aimlessly and committed alcohol induced egregious misconduct by eavesdropping on a private conversation and interposing himself into a personal conversation all to the point where he allegedly did not know where he was or what he did. Without proof of such egregious intoxication, through the misconduct alleged, the Count cannot stand. The proof establishes nothing more and nothing less than that the Respondent was intoxicated to the minimal level whereby he was at all times oriented as to place and purpose, evidenced no confusion whatsoever, and engaged in no inappropriate conduct as alleged in the Count.

13. Lisa Jeanes reported to Officer Nash, as reflected in his report attached hereto as Exhibit 1, that she "assumed" that Judge Cope was eavesdropping since he appeared to know what she and her mother were discussing. A mere "assumption" of a material fact cannot as a matter of law establish such allegations particularly where, as here, the basis for the assumption itself is nowhere established in the witness' testimony. She told Officer Nash that she and her mother were "commiserating about her recent abortion" and had drank two bottles of wine after a "night of drinking beer." She professed total confusion as to events until later on the morning of April 4th, which confusion spans paragraphs 1 through 5 of Count I.

14. Concerning her mental state on the evening April 3rd early morning hours of April 4th Lisa Jeanes made telling admissions which further establish Count I cannot stand. Certainly no evidence of "eavesdropping" is presented:

> "I was intoxicated. I was very, very intoxicated. If I had been thinking clearly, first of all we wouldn't have been out there on the balcony discussing all these things. Second of all, we wouldn't have ever left with that man. We would have just gone and called the police. Third of all, I wouldn't have gone out on the beach with a stranger so I understand your - - that's a very good point. That made no sense but none of the evening made any sense every bit of it had to do with alcohol and emotion.
> Question: It particularly doesn't make any sense when you told the police he offered you his hotel room to use his phone, isn't that true?
> Answer: I told you I don't remember him saying that.
> Question: But you haven't denied it either.
> Answer: I can't deny it because I don't know." (Deposition Transcript, pg. 195)[5]
>
> "Question: **I want to know what he said (Respondent) when he first appeared**.
> Answer: **I can't tell you exactly word for word anything. I was very intoxicated**. (Deposition Transcript, Pg. 20) **I can tell you the gist of what happened. He arrived - - and all I know is he is like I can take you to a safe place**." (Deposition Transcript, Pg. 21)
>
> "Question: **He arrived and the phone rang and you discovered the key was missing**?"
> Answer: **Yes**."
> "**I was intoxicated and I had the impression that this guy was this religious person. I felt like he knew this. I don't know why but I did - - I didn't think oh, he's eavesdropping on us. It just didn't - - I didn't think about it. He just**

[5] This testimony was intended to support her third version of events. Initially she reported to Officer Nash that Cope offered his hotel room, which was true. She then reported to Officer Nash that she didn't understand that they were going to a hotel room but thought they were going to a large gathering of people to socialize (which in itself is preposterous). In her deposition she claimed she thought "we were going to a shelter."

showed up - - I think he at one point he said I'm a friend and that was on the porch I kind of remember that." (Deposition Transcript, Pg. 28)

15. Paragraph 3 of Count I alleges the Respondent "interposed yourself" into the women's conversation. As noted, the only competent evidence concerning this allegation is that the Respondent offered assistance in getting into their hotel room. The mother Nina Jeanes testified:

"Question: Now you say he had a conversation with you.
Answer: He just suddenly appeared.
Question: Did he have a conversation with you?
Answer: I don't recall.
Question: Did you say anything to him?
Answer: I don't recall. I'm sure I did.
Question: Did he say anything to you?
Answer: I would imagine.
Question: Do you recall anything that you discussed with Judge Cope?
Answer: No.
Question: Did Judge Cope have a discussion with your daughter?
Answer: Not in my presence.
Question: How long was he there?
Answer: I don't know.
Question: Was it more than 5 minutes?
Answer: I don't know." (Transcript pgs. 88, 89)

16. The daughter likewise denied Respondent interposed himself in a personal conversation; and further admitted supposed statements by the Respondent forming the basis for an assumption of eavesdropping were made at the beach after she had already confided in Respondent:

I can't tell you exactly word for word anything. I was very intoxicated . . . I can tell you the gist of what happened. He

arrived - - and all I know is he was like I can take you to a safe place . . .
Question: He arrived and the phone range you discovered the key was missing?
Answer: Yes. I was intoxicated and I had the impression this guy was this religious person I felt like he knew this I don't know why but I did - - **I didn't think oh he's eavesdropping on us it just didn't I didn't think about it he just showed up - - I think at one point he said I'm a friend and that was on the porch I kind of remember that**." (Deposition Transcript, pg. 28)

"Question: **Between the time that he arrived and the time that the phone rang did you allow him to discuss your private matters with him**?
Answer: We weren't - - **no we didn't get into any more conversation**. He just appeared to know everything.
Question: How did he appear to know anything, what did he say?
Answer: Because he kept saying you will be forgiven but I can't give you your babies back but you will be forgiven.
Question: He said that on the balcony?
Answer: Yes, he did.
Question: He said that on the balcony?
Answer: He immediately knew everything.
Question: **He said that on the balcony?**
Answer: **Yes, he did.**
Question: The first thing that you heard him say was that you will be forgiven?
Answer: No.
Question: He said you'll be forgiven?
Answer: Yes he kept saying you will be forgiven that's why I thought he was a religious person - - he just showed up. He kept saying you will be forgiven. I kept saying who are you and he didn't have an answer." (Deposition Transcript, pgs. 24, 25, 28)

"- - he kept saying you will be forgiven but I can't give you back your babies. That rings in my mind over and over again and that to me is something a religious person would say to you, you will be forgiven. I can't get you back your babies but you will be forgiven. He kept stressing that.
Question: **Did he tell you that on the beach?**

Answer: **Yes, he did on the beach.**
Question: **Do you have an independent recollection clear recollection that he told you that on the balcony as well?**
Answer: **I don't.**
Question: You do not ?
Answer: Of what? That he told me what?
Question: Just what you said you didn't have a recollection of.
Answer: I do remember him saying you will be forgiven.
Question: **On the balcony?**
Answer: **Yes, I do. I remember that."** (Deposition Transcript, pgs. 76, 77)

"Question: Was Judge Cope intoxicated that night?
Answer: I have no idea. I could not assess anybody's mental state with the way I was. I was very, very intoxicated. I have no idea. That night the first night I have no idea."

17. As to paragraph 5 of Count I, JQC witness Nina Jeanes professed to have a total absence of recollection. Both JQC witnesses Nina and Lisa Jeanes were unable to even express an opinion that the Respondent was intoxicated.

18. Officer Nash testified under oath that upon approaching the three walking in the street they appeared to be intoxicated by an observed unsteady gait. However, Nash admitted that the three were walking arm-in-arm with the Respondent in the middle. Officer Nash acknowledged that both of the women were more intoxicated than Respondent; and Lisa Jeanes admitted having to hold on to Respondent for support, therefore any unsteady gait of the Respondent can only be attributed to supporting the weight of two women who were far more intoxicated than he was. Furthermore, no field sobriety or breathalyzer tests were administered; and no objective evidence exists as to the extent or degree of Respondent's intoxication. While Officer Nash

testified that when he first observed the trio walking down the street with "an unsteady gait," he acknowledged that both women were leaning on Judge Cope and admitted that he did not know whether the Respondent's unsteady gait was caused by the weight of the women leaning on him or not.

19. Nash testified that Respondent was coherent, cooperative, knew where he was, and knew where he was going. In addition, JQC witness Judge Steinheider will testify that he overheard a shouting match of extensive duration between Lisa and Nina Jeanes in which they both employed profuse profanity and he heard Respondent calmly attempting to mediate the argument.

20. As to paragraph 6 of Count 1[6], the JQC possesses no evidence whatsoever that Respondent "wandered the streets." Nor does the JQC possess evidence that Respondent was "very intoxicated." Respondent has testified that while he was intoxicated it was not to a degree alleged in the count. Moreover, Officer Nash testified that Respondent was not even intoxicated in his opinion. Therefore, paragraph 6 of Count I cannot stand.

21. As to paragraph 7 of Count I, the allegation is simply untrue. To the contrary, when confronted with an alleged gap in time between his recollected activities on the evening of April 4th, Respondent expressed to police during interrogation following his arrest wonderment whether there was a gap in his memory. He concluded that there was not. He has since testified under oath

---

[6] Which multifariously alleges conduct on the day following that alleged in paragraphs 1 through 4 of Count I.

that there was no gap in his memory and has clearly delineated what he did and where he went on the evening of April 4 and early morning hours of April 5, 2001.. There is no evidence to the contrary.

22. As paragraphs 1 through 7 of Count I cannot stand; neither can paragraph 8 of Count I.

23. Officer Nash admitted that he did not perform any objective field sobriety tests or breathalyzer on the Respondent and acknowledged that the only basis for his opinion that Respondent was intoxicated was his "training and experience."

24. The following testimony establishes conclusively that Judge Cope was not and could not have been intoxicated to the degree alleged in Count I:

"Question: Judge Cope was coherent when he spoke to you was he not?
Answer: Yes he was.
Question: Alright he didn't evidence any confusion as to where he was?
Answer: No he did not.
Question: And he told you where he was going correct?
Answer: Yes he did." (Transcript pgs. 18, 19)

25. Nash further testified:

"Question: Was Judge Cope cooperative in response to your questions?
Answer: Yes he was." (Transcript pg. 24)

26. He further asserted that the two women were more intoxicated than the Respondent; and reaffirmed that Judge Cope evidenced no confusion whatsoever:

"Question: So the two women were more intoxicated than Judge Cope in your opinion?
Answer: Correct.
Question: Judge Cope evidenced no confusion at the hotel room in responding to your questions during your FIR did he?
Answer: No he did not." (Transcript pg. 25, 26)

27. The Respondent himself provided a coherent and consistent rendition of events on both the early morning hours of April 4th and April 5th evidencing no confusion whatsoever and no impairment of recollection that would be consistent with the level of intoxication asserted in Count I.

28. Count I multifariously alleges that the Respondent was "very intoxicated in public and wandered the streets" during the evening of April 4 and early morning of April 5, 2001. There is no evidence supporting this allegation whatsoever and the evidence developed by the JQC conclusively refutes the allegation. In fact, Officer Nash, who confronted Respondent at the time he was arrested in the early morning hours of April 5th denied that Respondent was even intoxicated:

"Question: What was Judge Cope's mental state when he was arrested?
Answer: He appeared to have been drinking. He had an odor of alcoholic beverage coming from his breath. His speech was slightly slurred.
Question: So he appeared to be intoxicated.
Answer: I would not say intoxicated. I would say under the influence.
Question: So is your testimony then that he was less intoxicated than he was the night before.
Answer: Yes." (Transcript pg. 76)

"Question: Well Officer you didn't observe him leaning on anybody to stand did you?
Question: The night before
Answer: I observed him leaning as well as being leaned on.
Question: Well Officer Lisa Vann Jeanes has testified under oath that she was leaning on Judge Cope so that he could help hold her up do you dispute that testimony?
Answer: No.
Question: Is there any other basis on which you conclude that Judge Cope was more intoxicated on the night before his arrest?
Answer: No.

29. Accordingly, Respondent moves for summary judgment on Count I.

COUNT II – THEFT

30. Respondent moves for summary judgment on Count II, alleging theft of Lisa Jeanes' hotel room key.

31. The evidence in possession of the JQC establishes clearly and convincingly that the key was lost before the Respondent ever met Lisa or Nina Jeanes. Specifically, Sandra Backinger, manager of the Normandy Inn, was deposed by JQC Counsel and testified under oath that between the hours of 2:00 and 5:00 p.m. on April 4, 2001, Nina Vann Jeanes reported to her that her daughter Lisa Jeanes lost her room key on the preceding day, April 3, 2001, at the beach or while shopping. The relevant portions of the transcript of her testimony is attached as Exhibit 2. She testified:

"Question: When did you first become aware that Nina Jeanes lost a key to room 306?
Answer: I had that information given to me on April the 4th, Wednesday. It was during the shift I worked which was from 2:00 o'clock p.m. until 10:00 o'clock p.m.
Question: And how did you find out?

Answer" Nina Jeanes came to the front desk and reported to me that her daughter had misplaced or lost a key, perhaps walking on the beach, perhaps shopping in the village near Carmel, and she needed a replacement.

"Question: The possibilities with respect to which the key might have been lost, like walking on the beach or shopping in Carmel, were those possibilities that Nina Jeanes suggested to you when she told you the key was lost?
Answer: Yes."

"Question: You specifically remember she told you it might have been while she was walking on the beach or shopping in Carmel?
Answer: Definitely on the beach."

"Question" Did you tell her you would make one or get one to her? How did it end?
Answer: I believe, as I best can recall, that I told her we did not have an extra key and that she accepted that; that they would be careful because they still had one key among them, and she apologized. And we left it at that." (Transcript pgs. 77, 78)"

"Question: As I understand it, you told him that Nina Jeanes had come to you shortly after your shift began at 2:00 p.m. on April 4th and reported that her daughter had lost her key the preceding day; is that correct?
Answer: Yes." (Transcript pg. 106)

32. The Respondent has testified that his attention was called to the women by loud voices and crying; and upon approach and offer of assistance he learned they could not locate their room key.

33. Lisa Jeanes testified in deposition that the key was placed next to her as she was seated on the balcony outside of her hotel room; and that she carefully guarded the key at all times.

34. Inconsistently Lisa Jeanes reported on April 5, 2001, to Officer Philip Nash that she had paid no attention to where the key was:

> "I asked her if it was possible that Cope had somehow managed to obtain it (the key) while talking with them outside that evening. She told us that she had been rather intoxicated that evening and thus had not been paying close attention to it or anything else." (Report of Interview of Officer Nash, April 5, 2001)

versus

> "The key I think was right beside me right there. I know it was always right beside me because I kept putting my hand on the key - - I went and used the restroom. There was a time I went off the balcony to my car so I moved around and I moved with the key." (Tr. Pg 16)

35. Both Lisa and Nina Jeanes testified under oath at deposition that Judge Cope was standing on the balcony, a distance from where the key was supposedly situated and was never observed bending over, reaching for or otherwise obtaining possession of the key:

> "Question: Did you ever see Judge Cope bend over and pick that key up?
> Answer: No.
> Question: Did you ever sit down next to him?
> Answer: No, not that I remember. He was standing.
> Question: And certainly you were in a position to see if Judge Cope had bent down and picked that key up, weren't you?
> Answer: Well I would be in a position but I was very intoxicated. I could very well have missed him getting that key. I was very drunk.
> Question: It totally missed your attention that he would bend over and pick that key up off the deck?
> Answer: I can't remember a lot of things that were said so I - - I can't remember that happening but I can't say it didn't happen.
> Question: You never saw it happen?

Answer: I never saw it happen. I do not remember seeing it happen.
Question: And Judge Cope never sat down next to you?
Answer: I do not remember that.
Question: Well you have testified already he was standing and you already marked where he was standing.
Answer: Yes, that's what I remember.
Question: You would agree with that as away from the key.
Answer: Yes. Well, it's not - - sure it's away from the key."
(Transcript Deposition, pg. 66)

36. Lisa Jeanes admitted in deposition that she went into the room to use the bathroom and returned to the porch to engage in further conversation with her mother. She also asserted in deposition that she was terrible at locking hotel doors. Since the evidence incontrovertibly establishes that this door to Room 306 was not self locking, and Lisa Jeanes claims to have gone into the room to use the bathroom, the door would not have locked under the circumstances described by the witnesses. Rather the evidence is clear that the witnesses had locked the door much earlier in the day and had returned finding it locked as described by the Respondent; and consistent with the time and circumstances of the lost key as reported by Nina Jeanes to Sandra Backinger. Ms. Backinger testified:

"Question: Tell me about the locks that were on the door to room 306 in April of 2001.
Answer: We had three locks on the door. One was the door handle. Second, above that was the dead bolt which was used within the room. The second was the chain which was used within the room.
Question: The door handle, is that a lever or a knob?
Answer: Knob. Opened only with a key.

Question: And the key you showed me that is Exhibit 5, would that be the kind of key that would be used in the doorknob?
Answer: Yes.
Question: So on the outside of the door in the middle of the doorknob was there a key hole?
Answer" Yes.
Question: What was - - describe the doorknob on the inside of the door.
Answer: Inside we had two kinds, we had a push button or we had a little knob.
Question: Okay. So it would be like either a push button or tab type knob in the middle that might turn clockwise or counter clockwise?
Answer: Correct.
Question: Which kind was on the inside of room 306?
Answer: I believe it was - -
Question: The tab that turn clockwise or counter clockwise?
Answer: I believe so.
Question: Is that correct?
Answer: I believe so.
Question: You are not sure?
Answer: I'm not sure.
Question: I'll ask you about each type separately. For the type of doorknob that had the tabbed knob in the center that would be turned clockwise or counter clockwise, **if you are outside that door, how do your lock it?**
Answer: **You had to reach - - keep the door open, reach your hand inside of the room, turn the doorknob and close the door and then it would lock**.
Question: When you say turn the doorknob - - why don't we call this the tab.
Answer: Okay. The tab.
Question: By the tab, I'm going to use that to refer to the tabbed type knob that turned clockwise or counter clockwise that's in the center of the doorknob.
Answer: Correct. Within the room
Question: Go on.
Answer: **Yes. You had to turn that tab, close the door and then it would lock**.
Question: **So you could not lock the doorknob with the key from the outside?**
Answer: **Correct**.

Question: **If you unlocked the doorknob lock with a key and entered the room and then closed the door, of course, remove the key from the doorknob and close the door, do nothing else, is the doorknob locked?**
Answer: **No**." (Transcript pgs. 54-57)

37. Officer Nash admitted under oath in deposition that he had no evidence that the Respondent took, stole or possessed the key to the women's room.

38. Furthermore, in a taped statement to District Attorney investigator Brown on June 15, 2001, Lisa Jeanes stated on tape, contrary to her reports to police and contrary to the report to the manager of the Normandy Inn, that she and her mother didn't even realize a key was lost until later in the day on April 4, 2001. Further, she testified as follows at her deposition:

"Question: Is it true that on April 4th you didn't realize that you had lost the key the night before?
Answer: I guess. I guess that's true." (Deposition Transcript, pg. 186)

39. Further, Lisa Jeanes testified under oath at deposition that she never saw the key in the Respondent's possession; that she never handed the key to Respondent for any purpose whatsoever; and that her mother never handed the key to Respondent or possessed the key at any time.

COUNT III – INAPPROPRIATE CONDUCT OF AN INTIMATE NATURE

40. Respondent moves for summary judgment on Count III – Inappropriate Conduct of an Intimate Nature.

41. Here again this charge was brought against the Respondent solely on the basis of a police report that has now been established in the evidence to be utterly

false. Specifically, the alleged victim, Lisa Vann Jeanes, reported to police that Respondent made aggressive sexual advances against her on a public beach, touched her breasts, kissed her, and inserted his tongue in her mouth. These allegations have now been expressly and thoroughly repudiated by the witness.

42. In a taped statement made to District Attorney Investigator Brown on June 15, 2001, the witness asserted that Respondent never even kissed her on the beach. In deposition on March 1, 2002, the witness reaffirmed that the Respondent did not even kiss her on the beach and was aware of no deliberate conduct of an intimate nature on the part of the Respondent.

43. While the Respondent has acknowledged kissing the 32 year old woman on the beach, such conduct occurred at approximately between the hours of 2:00 a.m. and 3:00 a.m. and the evidence is conclusive that the beach was deserted. Therefore the conduct was not witnessed by anyone and in any event could not be the appropriate subject of JQC inquiry or sanction.

44. The only evidence of conduct of an intimate nature (which is not specifically charged in Count III), was evidence provided by the Respondent himself concerning consensual conduct between himself and the 32 year old woman in the privacy of a hotel room. There is no evidence that such conduct occurred by virtue of the woman's allegedly "emotionally vulnerable state." To the contrary, the woman herself testified that she had essentially sobered up by that time. She further testified that at no time did the Respondent take

advantage of her. Furthermore the conduct ceased upon the woman's request.

45. While the woman has falsely denied the conduct occurring in the hotel room, the Respondent's testimony does not describe conduct that is an appropriate subject for a JQC inquiry or sanction. The conduct was entirely consensual, did not arise to the level of sexual intercourse, and the conduct immediately ceased upon the woman's request. No criminal conduct was involved or implicated. This was not a situation where a judge was bringing a prostitute into a hotel room or otherwise engaging in criminal or publicly lewd activity. The JQC has no business investigating or sanctioning any judge in the circumstances described by the Respondent. Moreover, the evidence establishes that the 32 year old woman affirmatively sought out the company of the Respondent and was the aggressor in the sequence of events that led up to the brief encounter in a private hotel room.

46. The JQC's evidence consists solely of the testimony of Lisa Jeanes which, if believed, establishes only that the Respondent attempted to kiss her while the two were on a deserted beach between 2:00 a.m. and 3:00 a.m. on the morning of April 4, 2001. Such testimony establishes neither conduct of an intimate nature as alleged in the count or that the conduct was in public view or seen by anyone. No evidence exists establishing that the conduct was witnessed by anyone.

47. Further, her testimony as noted directly contradicts her reports to Officer Nash on April 5, 2001, and establishes in the best light for the JQC no inappropriate conduct whatsoever, and further took no advantage of her:

"Question: - - well he didn't grab your face he cupped your face, correct?
Answer: He cupped my face with both of his hands.
Question: Very gently, isn't that true?
Answer: No, it was gentle. He wasn't aggressive.
Question: He wasn't insolent to you or –
Answer: No. - -
Question: - - you never told him not to kiss you?
Answer: I just turned my head away from him. - -
Question: - - He never threatened you in any way?
Answer: No. - -
Question: So nothing in his demeanor or actions towards you suggested to you that he intended any kind of physical harm to you?
Answer: Not physical harm no.
Question: Or even aggressive sexual harm to you?
Answer: Not aggressive sexual harm no." (Deposition Transcript, pgs. 118, 119)

48. As noted, Lisa Jeanes lied at deposition concerning her earlier report to Officer Nash:

"Question: Did you tell the police that Judge Cope made several forceful sexual advances toward you?
Answer: No.
Question: Touching your breasts?
Answer: He brushed my breast. One of the times when he came down from my face he brushed down across my breast?
Question: One breast correct?
Answer: Yes, I think one breast.
Question: Do you know whether that was intentional or not?
Answer: No, I do not.
Question: Did it appear to you that it was accidental?
Answer: I don't know.
Question: You just don't know one way or the other?

Answer: I just remember thinking that - - that was right when I was coming to the conclusion that this guy had ulterior motives.
Question: Did you tell the police that he deliberately touched your breasts plural?
Answer: I did not tell the police that.
Question: Did you tell the police that he repeatedly kissed you on the lips and inserted his tongue in your mouth?
Answer: No, I did not tell the police that." (Deposition Transcript, pgs. 161, 162)

49. As noted, the only intimate conduct engaged in by the Respondent was mutually engaged in by two consenting adults in the privacy of his hotel room. However, such conduct did not remotely approach the level of sexual intercourse and the alleged victim denies that such conduct even occurred. Accepting Respondent's testimony that such conduct did occur, the alleged victim has admitted that at the time that such conduct would have occurred she was no longer "obviously intoxicated" or in an "emotionally vulnerable state."

50. The Respondent's conduct in the privacy of his hotel room in the circumstances is neither an appropriate subject for JQC inquiry, nor does it serve to undermine the public's confidence in the judiciary or otherwise demean the judicial office; and Count III should be dismissed and judgment entered on behalf of the Respondent.

COUNT IV – PROWLING AND ATTEMPTED FORCIBLE ENTRY

51. Respondent moves to dismiss Count IV.

52. The evidence does not establish that Respondent ever possessed the key as alleged in paragraph 18 of Count IV and consequently Respondent could not have committed the conduct as otherwise alleged in the Count.

53. The witnesses Lisa and Nina Vann Jeanes and the investigating officer Nash all have testified under oath that there is no evidence that the person on the other side of the door peered inside the room as alleged in paragraph 17 of Count IV.

54. Officer Nash has testified under oath that Lisa Jeanes, contrary to her deposition testimony, told him that the door merely pushed against the chain lock. He further testified that any forcible push, as later and inconsistently claimed by Lisa Jeanes, would have broken the chain which was affixed with two small and fragile screws. He further testified there was no damage to the door which would be consistent with a forcible attempted entry.

55. Lisa Jeanes lied and gave otherwise inconsistent and even irrational testimony at deposition concerning her report of this event, contrary to her initial report to Officer Nash:

"Question: How loud was the door banging?
Answer: It was fairly loud.
Question: Was it banging so loud that you had the impression that someone was trying to break through the chain?
Answer: Yes. I felt that someone was being persistent to break the chain.
Question: Break the chain?
Answer: It wasn't one open and oh there's a chain there and it repetitively came up against the chain.
Question: Hard?

Answer: Yes. (Deposition Transcript, pgs. 131-132)

Question: Would it surprise you if that door was totally unmarked?
Answer: Yes.
Question: It would?
Answer: No, it would not surprise me.
Question: It would not?
Answer: No - - I can tell you there was persistent efforts to come through that chain. That's all I can tell you. If that guy really wanted to come through the door I'm sure he could have." (Deposition Transcript, pgs. 133, 134).

56. Officer Nash on the other hand testified:

"Question: Did she tell you that the door was slamming against the chain or just pushing against the chain?
Answer: I believe she told me it was pushes.
Question: Did you have any reason to suspect, based upon her description of what happened, that there might be damage to that door.
Answer: No.
Question: So you didn't examine the door for any damage I take it?
Answer: Well, the construction of the chain is two small screws holding it into the framework, and anything harder than a slight push is going to rip it clean out." (Transcript pgs. 81, 82)

"Question: Did you have any evidence, Officer, that whoever was at that door was attempting to break the door in?
Answer: No, I don't.
Question: In fact, you described the chain lock on that door as being rather easily broken if someone intended to break the door in; is that correct?
Answer: That is correct.
Question: So accordingly to the evidence you have, whoever was at that door did not intend to make a forceful entry, correct?
Question: Is that correct?
Answer: Didn't appear to be.
Question: And based upon the evidence that you have, Officer, if the person at that door did not have a key and the door was not

locked, what was described was consistent with someone accidentally going into the wrong room, was it not?
Answer: It could be." (Transcript, pgs. 103, 104)

57. In her June 15, 2001, statement to Investigator Brown she further inconsistently and falsely stated:

" - - and then the door was banging. I mean just absolutely, you know, banging with the chain, you know, trying to break it open basically."[7]

58. The identification of the Respondent at the door by Lisa Jeanes is highly suspect and does not meet the requisite standard of proof. Specifically, she reported to Officer Nash that she observed the Respondent through a "blurry" peephole standing several feet away from the door with his back to the door. She claimed he turned and gave her a view of him at which point she went to assist her mother to dial 911. The tape of the 911 call which was made after Lisa Jeanes purportedly positively identified the Respondent at the door, establishes that Lisa and Nina Jeanes did not recognize the Respondent. No report was given to the police during an extended telephone call of the identity of the Respondent.

59. In addition, at deposition Lisa Jeanes admitted that all she could see was the round outlines of a face and "big ears." She admitted she did not see Respondent's eyes or nose.

---

[7] The mother and daughter colluded in giving false testimony at their depositions. Included in this effort was the mother's claim, for the first time, that she too was awakened by the door banging against the chain. The daughter in her June 2001 statement acknowledged she had to wake her mother up. "And I jumped up and I went to the other side of the bed and I woke my Mom."

"Question: Did you tell the police before they took you to him (for the show up) that Charles Cope was the person at your door.
Answer: It was Officer Nash. I said it was the same guy from last night.
Question: When did you tell him that?
Answer: When he got to - - when he came in our room. He said what's happening. He started asking questions. It was the same guy from last night. He just tried to break-in to our room.
Question: But you didn't tell your mother that?
Answer: I don't remember what I said to my mother. She was getting on the phone with the police we were both shaking scared to death.
Question: You didn't tell your mother that and you didn't tell the police that until Officer Nash got to the door?[8]
Answer: I don't remember. I know I told Officer Nash it was the guy from last night.
Question: And you said the peephole was blurry because the door was at a slight angle.
Answer: Yes, I don't think it was blurry normally but the door was three inches ajar. I was looking out the peephole.
Question: What else did you recognize about Judge Cope other than his big ears as you put it?
Answer: Big, round face.
Question: Big, round face?
Answer: Yes.
Question: Anything else?
Answer: He's got a round face. I think his ears look big and he had a white coat on and that's all I remember.
Question: You're certain in your mind the coat was white?
Answer: I'm certain.
Question: Is there a light outside the door?
Answer: I imagine it's light out. I don't know truthfully where the lights are but it was bright on the balcony.

---

[8] Significantly, she reported to Officer Nash that before her mother got the police on the phone she had positively identified Cope at the door. However, an extended 911 transcript reflects no reference is made identifying Cope and there is a reference to the fact that the women did not know who it was.

Question: Are you sure he wasn't wearing a yellow coat.
Answer: I think it was white.
Question: You think it was white?
Answer: I think it was white.
Question: Are you certain it was white?
Answer: Maybe it was yellow, but I think it was white.
(Deposition Transcript, pgs. 146-148)
Question: You didn't give a description to Officer Nash, did you?
Answer: No. I actually I may have to tell you the truth I think I may have.
Question: Really, what was that description?
Answer: Probably the one I just gave you.
Question: A round face and big ears?
Answer: Round face big ears. I don't specifically remember saying that I remember saying it was the guy from last night.
Question: Could you see his eyes?
Answer: Yes kind of I mean I didn't look at his eyes closely.
Question: How about his nose?
Answer: I didn't look at his nose closely.
Question: So you couldn't - - you couldn't describe his eyes or his nose to the police?
Answer: No.
Question: Could you describe the color of his hair?
Answer: I think it was blondish-brown.
Question: You're not sure?
Answer: No.
Question: You didn't give that description to the police?
Answer: I don't' think so." (Deposition Transcript, pgs. 150-151)

60. In her June 2001 statement to Investigator Brown, she claimed that she knew it was the Respondent at the door before she ever supposedly saw him:

" - - I knew, I knew immediately that it had to be that guy; Cause I couldn't imagine that any one would just try and break in the door."

61. Additional testimony provided by Lisa Jeanes pertinent to this charge is similarly characterized by plain deceit and confusion. For example, she reported to police she was certain that she locked the door; yet testified at deposition she did not lock the door and never told the police that she did.

> "Question: Now had you locked the door?
> Answer: No, my Mom had - - - I didn't lock the door - - - I am terrible at locking doors. I know I didn't lock it.
> Question: Did you tell the police you locked the door?
> Answer: - - I didn't tell them I specifically locked it." (Deposition Transcript, Page 89)

versus

> "Lisa further stated that she had gone to sleep at approximately 22:30 hours and was certain she locked the door to the room." (Report of Officer Nash, April 5, 2001)

62. She also lied about her consumption of alcohol immediately prior to the events subject to this Count:

> "Question: Did you tell the police that you and your mom had dinner without any alcoholic beverages at the Hog's Breath Inn?
> Answer: No I did not tell them that - - there's no way I told them that because we did drink that night." (Deposition Transcript Page 84)

versus

> "They had dinner without alcoholic beverages at the Hog's Breath Inn at approximately 1900 hours." (Report of Officer Nash)

In fact, records obtained in discovery reflect they were both drinking heavily. The Daughter purchased five beers and drank at least four of them. The Mother consumed two martinis and at least three glasses of wine.

COUNT V – MAKING A FALSE MATERIAL STATEMENT TO THE POLICE

63. Respondent moves for summary judgment on Count V.

64. As to paragraph 21 of Count V, the evidence establishes that the Respondent was not arrested by the Carmel Police Department as therein alleged but rather was detained pursuant to a "citizens arrest" by complainant Lisa Jeanes.

65. As to paragraph 22 of Count V, the JQC itself has uncovered evidence which establishes clearly that Respondent did not knowingly make a material false statement to the Carmel Police Department.

66. This charge was filed based upon the assumption that because Judge Cope was believed to be at a certain restaurant, the Grill on Ocean Avenue, which closed much earlier in the evening, he had provided a false alibi to the police. Investigation by the JQC itself has determined that this assumption was incorrect. Specifically, the police asked Judge Cope to describe the restaurant and he described a "green and white restaurant." The police suggested to Judge Cope that the restaurant was the "Grill on Ocean Avenue." Because the restaurant Judge Cope was at was located on Ocean Avenue and in fact had an open grill, Judge Cope mistakenly believed that was the restaurant.

67. Finally, the evidence has established conclusively that Judge Cope was a different restaurant, Il Fornaio which was opened later that evening. Accordingly, there is no basis in the evidence to establish that Judge Cope

made a false material statement to the police; and the count should be dismissed.

MEMORANDUM OF LAW

It is undisputed that the record evidence in this case establishes that the JQC does not possess competent evidence which minimally meets the threshold standards set forth in the case of Inquiry Concerning Davie, 645 So.2d 398 (Fla. 1994).

As To Count III

The formal allegation asserts that Judge Cope engaged in inappropriate intimate conduct, further unspecified; and alternatively pleads that the conduct was either consensual or nonconsensual. The Count alleges that in either event, it was inappropriate because "much of it occurred in a public place" and the Woman at the time of the intimate conduct was "very intoxicated" and "in an emotionally vulnerable state."

For the purpose of this argument, the events which are arguably subject to Count III may be divided into two distinct categories. The first involves the conduct on the beach between the hours of 1:30 and 3:00 a.m. on April 4, 2001. At the time this charge was filed by the Investigative Panel, the Investigative Panel had conducted no investigation whatsoever into the charge other than to review the police report of Officer Nash and the fact that the California District Attorney charged Judge Cope with "battery."[9] Therein as noted Officer Nash reported the victim claimed that Judge Cope "made several

[9] In October 2001, counsel for the Respondent reported to the Investigative Panel that Judge Cope unequivocally denied the charge and had passed a polygraph on all issues raised by the California charges. The report of that examination was provided to the Panel, together with an earnest request that the Panel investigate the matters. The Panel refused to do so.

forceful sexual advances, touched her breasts, kissed her and inserted his tongue in her mouth" - - all conduct supposedly occurring on the beach. The Investigative Panel totally ignored the fundamentally contradictory report the "victim" gave to the District Attorney's Office Investigator on June 15, 2001, attached hereto as Exhibit 3. Therein she totally denied any of the conduct she had falsely reported to the police on the morning of April 5, 2001. Accepting the "victim's" testimony as true as given in her deposition, that Judge Cope was gentle at all times, never deliberately touched her inappropriately or even kissed her, there is indisputably no basis on which the JQC could conclude "by clear and convincing evidence" that any intimate conduct occurred whatsoever in a public place. Special Counsel seeks to ignore this repudiation by the victim and to use Judge Cope's own truthful statements regarding the occurrence on the beach to suggest it forms a basis for conviction under the Canons of Ethics and pursuant to the allegation. However, it is undisputed that Judge Cope reported only that the two mutually kissed on the beach. Further the beach was deserted. Further Judge Cope testified that the woman was not "very intoxicated" at the time (as did she) and that at the point when the kissing occurred she was in fact a happy, willing participant in that very limited activity. Accordingly, there is no basis from which the JQC could find that the conduct admitted by Judge Cope on the beach was either a) intimate, b) in a public place (i.e., witnessed by anyone), or c) in any manner or form nonconsensual on the part of the Woman.

The second category of intimate conduct which the JQC now argues falls under the umbrella of Count III, is that limited intimate conduct which took place in the privacy of Judge Cope's hotel room. Here again the evidence establishes without contradiction the Woman's denial that the conduct even occurred. To the extent she admits to any physical interaction at all with

Judge Cope, it consisted solely of earlier gentle attempts to kiss her which she rejected. Judge Cope's testimony, which is the only testimony that the JQC has upon which conclusions can be based with respect to the conduct in the hotel room is uncontradicted and stipulated as true. His testimony is that the woman, as she herself admitted, was essentially sobering up, that she was in full control of her faculties, and that he did not take any advantage of her as clearly and convincingly established by the fact that after a brief period of light petting the woman herself requested the activity stop and it did.

Thus, assuming jurisdiction of the JQC over such conduct in the privacy of a hotel room, the only evidence of the conduct is Judge Cope's testimony which clearly establishes her conduct was consensual. Judge Cope's testimony is amply corroborated by independent investigation conducted at great expense by Judge Cope. The results of which are elsewhere setout in this motion.

The Woman further admitted Judge Cope never took advantage of her. The evidence clearly shows that this woman was a mature 32 year old with a history of unrestrained sexual activity and drinking, who made a direct and unvarnished pitch for Judge Cope's company, including his physical company. At the time of her visit to Carmel this woman was having or recently had adulterous relationships, with not one but two married men.

Moreover, her recorded statement to the District Attorney's Investigator further conclusively belie the proposition that she was either "obviously intoxicated" or "emotionally vulnerable."

In describing what occurred on the beach before they even got to the hotel room the Woman stated:

> I realized okay I need to get out of here. I need to get away from this guy. But I was really nervous because the sand was really deep and I didn't know how well I could get away from this guy running in the sand. And, but when I got up to the parking lot, I felt much more confident that I could get away from him. . . He was very touchy you know, like when we walked from the driftwood up to the parking lot, he had his arm around me and I just kept walking and he was walking with me. And I didn't want to make a big deal and then when we got up to the parking lot, he again tried . . I guess you could say embrace me. - - He was wearing like a white jacket - - I pushed him pretty good. And I turned and took off. I remember stumbling. I almost fell down but I didn't. . . . It's pretty clear still and I remember every time . . I would stop, I would look back and he wasn't after - - I never saw him again.

The above statements clearly evidence not only a sophisticated and clear thought process (albeit dishonest); they further evidence a determination not to be taken advantage of and mental and physical faculties inconsistent with being "very intoxicated." These mental and physical faculties are reflected in further unambiguous statements that she made.

> "I mean I really felt like he had ulterior motives. And I mentioned it then (to her Mother) and we went to bed . . . At some point when we were on the beach . . he said you know, 'go to dinner with me tomorrow night' and I said, 'no I'm here with my mom' and he said that like twice - - more than definitely more than once . . and I was like, where is this . . what does this have to do with anything . . at that point I was coming to, going wait a second, I don't think this guy is a sincere guy . ."

To be sure each of the above statements is false; but they demonstrate conclusive admissions that she was possessed of the faculties that Count III asserts she did not possess. Indeed Judge Cope's report of what occurred in the hotel room and before they got to the hotel

room is equally consistent with her possession of these faculties. Accordingly, there is no evidentiary basis to support the gratuitous assumptions that she was taken advantage of by Judge Cope due to her supposed "extreme intoxication" and supposed "emotionally vulnerable state." Moreover, when she said stop he did.

Apart from the fact that the charge has been disproven, is the fact that the conduct in the hotel room and the undisputed private and entirely legal character of that conduct, clearly places the conduct beyond the jurisdiction of the Judicial Qualifications Commission, and beyond the contemplated prohibitions of the Judicial Canons of Ethics. Such conduct is fundamentally protected by the privacy guarantees of both the federal and state constitutions, did not constitute criminal activity of any sort, and did not remotely approach sexual intercourse.

Special Counsel has acknowledged that a judge's sex life or conduct behind closed doors is ordinarily beyond the scope of the Code of Judicial Conduct or the legitimate concern of the Florida Judicial Qualifications Commission. No reported case in the United States warrants the conclusion that the Code of Judicial Conduct can reach into such a hallowed realm of privacy.

Indeed the cases in Florida and elsewhere draw a bright line between consensual, private sexual conduct of a judge and those situations where a judge is properly sanctioned for public conduct which brings approbation upon the judiciary. *See*, for example, *In Re: Lee*, 336 So.2d 1175, 1176 (Fla. 1976), where the court properly found that the judge engaged in conduct unbecoming a member of the judiciary where he "engaged in sexual activities with a member of the opposite sex not his wife in a parked automobile." In *Lee* the gravamen of the offense was the specific finding that the judge "openly engaged in sexual acts while in an automobile parked at a

public parking lot in Ft. Lauderdale, Florida" (emphasis added). Such flagrant public conduct caused the commission to conclude that Judge Lee had "rendered himself an object of disrespect and derision in his role as a judge, has caused public confidence in the judiciary to become eroded [and] is guilty of violating Canons 1 and 2 of the Code of Judicial Conduct." Review of cases elsewhere confirms the clear demarcation between a judge's entirely private conduct and that which by its flagrantly public character brings the judicial office into disrepute.

In the case of *In Re: Fournier*, 480 SE.2d 738 (SC 1997) a municipal judge was sanctioned for engaging in regularly conducted sexual activity in his car in his business parking lot, which activity was observed and complained of by the manager of a retail business and which was also observed by police. The respondent there was arrested and criminally charged with indecent exposure. Thus, the case directly implicated both criminal conduct and openly public conduct.

In the case of *In Re: Snyder*, 336 NW.2d 533 (Minn. 1983), a judge was censured for repeatedly engaging in sexual intercourse with another man's wife over the course of one and half years, continuing five months after he had notice of the investigation into those activities. Moreover, the conduct constituted adultery, a gross misdemeanor under Minnesota statutes. The judge was charged with conspiring with his lover to deceive her husband in preparing a false notice of a legal secretarial course to conceal their illicit rendezvous at a judge's meeting. Furthermore, the judge admitted to being the father of his lover's child, attended her baptism which public conduct became the subject of gossip and speculation in the community tending to bring the judicial office into disrepute. Moreover, the judge there signed orders to show cause against his lover's husband in a dissolution action. Clearly, this case establishes that there must be a basis whereby the conduct

complained of "brings the judicial office into disrepute" because of the flagrant nature of the conduct, the violation of a criminal statute, and/or the establishment of some nexus with the judicial office.

Similarly, in *Cincinnati Bar Association v Heitzler*, 291 NE.2d 477 (Ohio 1972), the judge was charged with three counts of sexual misconduct, two of which were dismissed. The allegation sustained was that the judge lived with another woman not his wife and that she was frequently at his apartment and the conduct gave the impression to others that they were living together. This count was sustained because the respondent's personal behavior "gave the appearance of impropriety and was not beyond reproach."

All of the foregoing cases share in common the requisite jurisdictional aspect of public behavior. Indeed Canon 2a states:

> "A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. (emphasis added)
>
> The prohibition against behaving with impropriety or the appearance of impropriety apply both to the professional and personal conduct of a judge."

Clearly, this commentary makes clear that the language of the Canon is addressed to the "personal conduct" of a judge only insofar as that "personal conduct" is public and would be the subject of "public scrutiny." The Canon clearly addresses only that judicial misconduct arising with the administration of judicial duties or personal misconduct which while not directly affiliated with judicial function, occurs in a public place or in some public manner such as to bring approbation upon the judiciary as a whole. The Canon does not and cannot purport to in any way sanction

private conduct by a judge which is clearly protected by the privacy guarantees of both the federal and state constitutions and is not criminal.

While the issue has not been presented squarely in Florida it has been addressed elsewhere.

This Court's attention is directed to the case "*In the Matter of Arthur Dallasandro, Judge of Court of Common Pleas of Lucerne County* before the Supreme Court of Pennsylvania, 483 PA 431, 397 A.2d 743 (PA 1979). There the judge was charged with numerous violations unrelated to sexual misconduct. However, one charge alleged that the judge maintained an improper intimate relationship over the course of 4 ½ years while he was a judge. Further that this relationship which involved sexual activity continued after the judge's girlfriend became married. Further the judge himself was married to another woman. In a well reasoned opinion which controls the disposition in this case on the facts here, the court held that both the Constitution of the State of Pennsylvania and the Judicial Canons do not permit sanctions for the type of conduct in that case (and therefore certainly not with the type of conduct here). As the court stated:

> "To read into the Constitution or the canons prohibitions which go beyond the above categories is to enter a most precarious area of inquiry for the state, the realm in which private moral beliefs are enforced and private notions of acceptable social conduct are treated as law. Standards in these private areas are constantly evolving, and escape, at any given moment, precise definition. Conduct of a judge or any public official which may be offensive to the personal sensitivities of a segment of the society is properly judged in the privacy of the ballot box. - - This tribunal can only be concerned with conduct which as previously noted involves a judge acting in his official capacity or conduct which affects the judge acting in an official capacity or conduct prohibited by law. - - The imposition of any

> discipline based on conduct unrelated to a judge's official conduct which is not prohibited by the public policy of this commonwealth as manifested in its laws would raise serious due process issues - - The conduct of the respondent involving his relationship with Judith Walton is not a violation of the law. - - Since the respondent's conduct was not prohibited by law there is no basis for discipline regardless of the private views of this Court."

Here of course the very limited intimate conduct did not remotely approach sexual intercourse, it was conducted entirely in private, no criminal laws were violated, and no adultery was committed. Simply put, it is none of the business of the JQC to sanction Judge Cope for this conduct. Were such a standard to apply, the mischief that would result and damage to the judiciary would be incalculable. Judges would routinely be subject to blackmail were they to engage in the most minor indiscretion in a private setting; even if they were merely falsely charged with such a minor indiscretion.

The principal of *Dallasandro* was affirmed in a recent case, *In the Matter of the Disciplinary Proceedings Against Honorable Ralph G. Turco* before the Supreme Court of Washington, *en banc*, 137 W.2d 227 970 p.2d 731 (Wash. 1999).

There the Respondent judge allegedly pushed his wife to the ground at a public affair. The judge argued in defense that his conduct was extra judicial conduct and therefore not appropriately the subject of discipline. He cited an aspect of the *Dallasandro* case which is not pertinent to the issue here (wherein the judge in the *Dallasandro* case was also accused of slapping his wife). Judge Turco asserted that the *Dallasandro* decision stands for the proposition that if he beats his wife in some place other than open court in a manner that does not result in a criminal conviction such conduct does not violate the Code of Judicial Conduct.

After a thorough discussion of precedent involving the proper reach of supervisory bodies to investigate and sanction judicial misconduct implicating conduct away from the bench and the appropriate reach of the Judicial Canons which require the highest standard of personal behavior in judges, the Supreme Court in *Turco* stated the following:

> In addressing extra judicial behavior of judges, our authority to discipline, and that of the Commission are not unlimited. We believe that authority is confined to those situations for which there is an articulatable nexus between the extra judicial conduct and the judge's duties. While certainly there is some extra judicial conduct that is reprehensible, not all such conduct reflects adversely on the judiciary or a particular judge's ability to decide cases fairly in a way that implicates our supervisory powers. All judges in Washington are either elected or appointed by elected officials, and are thus subject to popular opprobrium and election redress for conduct the public considers inappropriate, reprehensible or unseemingly for those who would be a judge among them. (emphasis added)

Turco, 970 P.2d at 740.

The court concluded that the evidence established clearly and convincingly that Judge Turco intentionally pushed his wife to the ground at a public function. The court specifically found a nexus between that conduct and Judge Turco's judicial duties by virtue of the fact that he was engaging in an act of domestic violence and victims of domestic violence appearing before him in court would be justified in questioning whether a judge who allowed himself to assault his own wife could rule impartially and wisely in the emotionally charged arena of domestic violence.

No such nexus exists in this case.

In the matter of Cunningham et al., 517 PA 417, 538 A.2d 473 (Penn. 1988), the Supreme Court of Pennsylvania considered disciplinary proceedings against eight judges all of whom were implicated in misconduct pursuant to a labor racketeering investigation conducted by

the Federal Bureau of Investigation. In a well reasoned opinion the court addressed Canons 1, 2 and 5 in concluding that they were designed specifically to support the standard of impartiality:

> "We are satisfied that Canons 1, 2 and 5c(1) were all designed to support the standard of impartiality mandated under Article V, Section 17(c) of the Pennsylvania Constitution. The 'high standard of conduct so that the integrity and independence of the judiciary may be preserved' required in Canon 1 obviously embraces the impartiality of judicial decision. The direction of Canon 2(A) that the judge "should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary' is also designed to protect the same interest. . . Canon 5c(1) clearly directs the jurist in his or her extrajudicial activities not to engage in venture that would 'tend to reflect adversely on his impartiality' again the need for the impartiality of the judgment to be unquestioned is evident. The Canons in question were intended to support the mandate of impartiality . . ."

Cunningham at 480, 481.

The allegations in those specific cases generally involve the acceptance of cash gifts from a potentially litigious organization (a labor union). The acceptance of such gifts, the court held, violate the above cited canons unless a relationship exists and the circumstances are such that a conclusion of wrongdoing cannot reasonably be drawn. Accordingly, because of the appearance of impropriety, and even where the jurist may not harbor an intent to show favor to the donor the mere public creation of the question of impropriety subjects the jurist to a demanding standard which "is justified in view of the importance of the interest to be protected."

In another case involving allegation of sexual misconduct, *In Re: Hasay*, 666 A.2d 795 (Penn. 1995), the judge was charged with going to a bar and drinking beer, dancing and singing with other individuals including an adult female, with whom he left the bar and drove to his house where the two engaged in sexual activities including intercourse without her consent. The charges

were brought against the judge by the Pennsylvania Judicial Conduct Board after criminal charges were filed against the judge alleging rape.[10] Notwithstanding the filing of the criminal charges, for which the judge was acquitted, it was determined that the facts established that the adult female voluntarily entered the respondent's car at the bar, remained in the respondent's vehicle while he himself left the vehicle, entered the respondent's home and talked for some time and thereafter consensually engaged in oral and vaginal intercourse. It was further found that the respondent made no physical or verbal threats against the adult female. The respondent was acquitted of all criminal charges. However the issue remained as to whether the respondent's conduct violated the Canons of Ethics. In an opinion that again confirms that the private, consensual, and constitutionally protected conduct of a judge is appropriately beyond the reach of sanction or discipline, the Supreme Court of Pennsylvania stated:

> "With respect to [the charge] we conclude that the intimate sexual activities between respondent and the adult female where consensual, and that the board has not supported its allegations by clear and convincing evidence. Therefore we conclude that the activities of the night of January 6-7, 1991, do not warrant the discipline for violation of the rules governing standards of conduct for district justices, the Pennsylvania constitution, or the crimes code. (*Hasey* at 799) (Johnson, J. dissenting)

Special Counsel for the JQC may contend that no barriers exist preventing the JQC from investigating a judge's private conduct, citing dicta in the case of *In Re: Frank*, 753 So.2d 1228 (Fla. 2000), wherein the court stated "a judge is a judge 7 days a week, 24 hours

---

[10] In this proceeding, the JQC filed its allegation in Count III against Judge Cope without conducting any investigation based on and in response to the criminal charge of "battery" previously filed in California.

a day and must act accordingly" (*Frank* at 1233). The application of such dicta, taken out of context, patently misconstrues its meaning as intended and utilized by the court in *Frank*. *Frank* dealt with allegations relating to the judge's active and public involvement in matters surrounding his daughter's divorce. In a four count complaint, the JQC alleged that Judge Frank made false or misleading statements to a newspaper reporter and under oath during a hearing before a grievance committee of the bar; failed to disclose to opposing counsel or recuse himself from appellate cases in which his daughter's attorney appeared; improperly interfered with the bar grievance proceeding by exerting his position as a judge in a manner unbecoming his office; and that during the divorce proceedings involving his daughter Judge Frank telephoned the husband's father and threatened to use his authority as a judge to have his son arrested or committed to a psychiatric facility.

The comment by the court that "a judge is a judge 7 days a week, 24 hours a day and must act accordingly" was specifically directed to Judge Frank's guilt on Counts I and II; and more particularly directed to the observation by the court that Judge Frank was "emotionally involved and interested in his daughter's divorce case and became extremely adverse to Mr. Straley," an occurrence the court found was "certainly not an uncommon occurrence in hotly contested dissolution litigation." The court offered the mitigating observation that Judge Frank's conduct "as a parent is well understood," which it then qualified with the remark concerning the judge's status as a judge 7 days a week and 24 hours a day.

In short, the cited language was clearly intended, and only intended, to demark Judge Frank's status as a judge first and foremost over and above his status as an aggrieved and emotionally involved parent. Nothing in the opinion or the language suggests that otherwise purely

private personal moral lapses or errors in judgment are properly within the reach of JQC scrutiny. The *Frank* case dealt with notoriously public matters. Indeed the court further emphasized the necessary predicate for discipline in the first instance, being the public aspect of the conduct and the appearance of impropriety thus created:

> "Judges must do all that is reasonably necessary to minimize the appearance of impropriety. They must remain cognizant of the fact that even in situations where they personally believe that their judgment would not be colored, public perception may differ." (Emphasis added)

Frank at 1240.

Finally, the court reiterated the dicta in its "conclusion" in a manner which clearly places the language in a context other than that which Special Counsel might suggest:

> "We understand that it would be beyond logic to suggest that judges must remain detached from matters important to them and their families. However, the JQC is correct in noting that a 'judge is a judge 7 days week, 24 hours a day'. While judges are human and also have parents, siblings and spouses, these relationships cannot be used to excuse the abuses which occurred here. We must not forget that those entrusted with the authority to carry out justice have the burden to not fail that awesome responsibility; fulfillment of that responsibility encompasses, *inter alia*, being entirely forthcoming in all judicial or quasi judicial proceedings irrespective of whether one appears as a witness, a party, or a judge."

WHEREFORE, for the above stated reasons the allegations subject to this Motion should be dismissed and judgment entered for the Respondent.

Respectfully submitted,

ROBERT W. MERKLE, ESQ.
Florida Bar Number: 138183
MERKLE & MAGRI, P.A.

5510 West LaSalle Street
Tampa, Florida 33607
Telephone: (813) 281-9000
Facsimile: (813) 281-2223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.,** Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Laudner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, **Louis Kwall, Esq.**, Co-Counsel for Respondent, 133 North Ft. Harrison Avenue, Clearwater, Florida 33755; this 28th day of May, 2002.

ROBERT W. MERKLE, ESQ.